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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 JOSE MIGUEL GUTIERREZ,

12 Petitioner,

13 vs.

14 BRIAN E. WILLIAMS, *et al.*,

15 Respondents.
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) 2:10-cv-00109-JCM-RJJ
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ORDER

17 Presently before the court is respondent Brian Williams et al's motion for clarification on
18 order dated February 4, 2011. (Doc. #21).

19 After reviewing respondent's motion to dismiss (doc. #12) and motion to strike (doc. #19),
20 and petitioner's opposition and request for stay (doc. #16), the court granted the motions to dismiss
21 and to stay, and held that the motion to strike was moot. (Doc. #20).

22 In the present motion (doc. #21), respondents ask this court to clarify the order regarding
23 which grounds were dismissed and which grounds were stayed. As respondent asserted in the motion
24 to dismiss (doc. #12), grounds two, three and four of the petition were unexhausted. The court held
25 that since the petition was "mixed," dismissal of these grounds without prejudice was proper so that
26 petitioner could return to state court to exhaust them. *Rose v. Lundy*, 455 U.S. 520-521 (1982). (Doc.

1 #20). In the petitioner's opposition (doc. #16), he conceded that the claims were unexhausted, and
2 asked the court to stay the proceedings on his remaining claim. As the court held in its order (doc.
3 #20), it is inclined to grant such a stay. *Rhines v. Weber*, 544 U.S. 269, 277 (2005).

4 As the respondent asserts in the motion for clarification (doc. #21), the court's order block
5 reflected that the court dismissed the petition without prejudice and stayed the case. This was in
6 error, as the court intended to dismiss grounds two, three and four of the petition, and stay the case
7 with regards to the remaining claim until the dismissed grounds are exhausted.

8 Accordingly,

9 IT IS HEREBY ORDERED ADJUDGED AND DECREED that respondent's motion for
10 clarification (doc. #21) be, and the same hereby is, GRANTED.

11 IT IS THEREFORE ORDERED that the court's order dated February 4, 2011 (doc. #20) be,
12 and the same hereby is, VACATED.

13 IT IS FURTHER ORDERED that respondent's motion to dismiss amended petition for writ
14 of habeas corpus (doc. #12) be, and the same hereby is DENIED in part, and GRANTED in part.

15 IT IS FURTHER ORDERED that petitioner's second, third and fourth grounds for relief be,
16 and the same hereby are, DISMISSED without prejudice.

17 IT IS FURTHER ORDERED that the above captioned case be STAYED to allow petitioner
18 to properly exhaust his claims in state court.

19 IT IS FURTHER ORDERED that respondent's motion to strike (doc. #19) be, and the same
20 hereby is, DENIED as moot.

21 DATED February 25, 2011.

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24 UNITED STATES DISTRICT JUDGE
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